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Arbitration, State Board, Labor Disputes

The Supreme Court of Louisiana, in *New Orleans City & L. R. Co.* v. *State Board of Arbitration*, 17 So. Rep. 418, has recently given a very full statement of the powers and duties of the state board of arbitration, established for the settlement of labor disputes, which is empowered to hold an investigation without the consent of all the parties, (1) On application of employers or employes, or of a duly authorized agent of the latter; or (2) On notification from the mayor or a district judge in the parishes that a lock-out or strike is seriously threatened. The summary of these powers and duties is as follows:

(1) The board is not vested with judicial functions. It sits as a court of conciliation, with the authority to formulate a decision, and to have it recorded:

(2) In the first instance, it is the duty of the board to pass upon questions of regularity and compliance with the statute, or the contrary, in the steps taken to bring labor troubles to its notice:

(3) It is authorized to hear the parties, make inquiry into the causes of trouble, advise the parties, and keep a record of its decision regarding the cause of dispute:

(4) It is not bound in all things to decide according to technical rules of law that would possibly determine issues in a court of justice, but it is subject to the terms of the statute under which it was organized, and is bound to observe those broad rules of law and equity without which no board of arbitration and conciliation can make a just decision:

(5) Objections upon the grounds of irregularity must be urged before the board, and heard contradictorily with the parties concerned, or their duly authorized representatives, prior to application to the court to correct alleged errors:

(6) An apprehension that the conclusion and decision of the board will be erroneous is no ground for an injunction; for an injunction will not issue to control the action of public agents, acting under legislative authority, unless irreparable injury is evident.

Banks, Clearing-house Rule, Insolvent Banks

The Court of Appeals of New York has lately held, affirming 32 N. Y. Suppl. 498, that under the rules of the New York clearing-house, which provide that arrangements by a member of the association to clear for an outside bank shall not be discontinued without previous notice, and that the notice shall not take effect until the completion of clearances on the day after the receipt of the notice, a contract by which a member agrees with a bank that is not a member to clear for it, in consideration of a deposit of a certain sum of money and bills receivable, is valid, and requires the member to pay checks on the other bank presented to the clearing-house on the day after notice of discontinuance is given, though it knew at the time that the other bank was insolvent; and that such payments are therefore not within the prohibition of the New York statute, (Laws 1892, c. 68, § 48,) forbidding payments by an insolvent corporation made with intent to prefer creditors, and the money and securities held under the aforesaid contract are applicable to the amount of the checks so paid: *O'Brien* v. *Grant*, 40 N. E. Rep. 871. ANDREWS, C. J., and PECKHAM, J., dissented.

Building Associations, Insolvency, Assessment

An insolvent building association has the right to make an assessment on a borrowing member's stock, for the purpose of covering losses, and thereby equalizing the members, so that at the closing of the affairs of the association all may go out on an equal footing: *Wohlford* v. *Citizens' Building, Loan & Savings Assn.*, (Supreme Court of Indiana,) 40 N. E. Rep. 694.

Building Contract, Construction, Alteration of Plans

According to a recent decision of the Supreme Court of Pennsylvania, the provision of a building contract for the forfeiture of $10 a day for each day the building remains unfinished after the day fixed for its completion, does not apply to delay caused by changes in the material ordered by the owners, though the contract should provide that any change in the plans, "either in quantity or quality of the work," shall be executed by the contractor, "without holding the contract as violated or void in any other respect:" *Lilly* v. *Person*, 32 Atl. Rep. 23.

Carriers, Assault on Trespasser by Servant

In the opinion of the Supreme Court of Mississippi, a sleeping car company is not liable for an assault made by one of its stewards on a passenger on one of the regular cars of the train, who has without right entered the defendant's car attached to the train, in order to induce the steward to sell him liquor, in violation of the law, and of the orders of the company: *Cassedy* v. *Pullman Palace-Car Co.*, 17 So. Rep. 373.

Licensee, Person Assisting Another on Train

The Court of Civil Appeals of Texas has recently held, in accord with the weight of authority, that a person who boards a train merely to assist another to a seat must give notice of his intention to get off again, in order to hold the company liable for not having given him time to do so; especially when the train had stopped the usual and a reasonable time for passengers to get on and off, and he jumped off of his own volition after it had started: *Dillingham* v. *Pierce*, 31 S. W. Rep. 203.

One who boards a train in order to assist another thereon, without giving the employes of the company any notice of

his intention to alight, cannot recover, if, after the train has started, he attempts to get off without requesting that the train be stopped, and is injured while so doing: *Central R. R. & Banking Co. of Georgia* v. *Letcher*, 69 Ala. 106. See 2 AM. L. REG. & REV. (N. S.) 151.

In *Griswold* v. *Chic. & N. W. Ry. Co.*, 64 Wis. 652; S. C., 26 N. W. Rep. 101, a person not a passenger got upon a railroad train at a station in order to assist his wife, who was a passenger, to alight therefrom. She had already left the train; and while he was standing on the platform of a car, the train suddenly started, and he was thrown off and injured. Before it started, however, all passengers for that station had got off, those waiting to take the train had got on, and the mail, express matter and baggage had been put off. None of the employes of the company knew that he expected to go on the train, or that he had done so; and a brakeman knew that his wife had got off the train, and needed no assistance. Upon these facts, it was held that he could not recover.

Injury to Passenger, Free Pass

When the plaintiff, who was injured by the negligence of a servant of the company, was at the time of the injury on a trip, by special invitation, in the officers' car, and was not called upon to pay his fare, the fact that he held an annual free pass over the road does not relieve the company from liability. It will not be assumed, from the fact that he had a free pass, that he was using it on the occasion in question, in the face of a special request to ride in the officers' car, where fare is not charged: *Thompson* v. *Yazoo & M. V. R. Co.*, (Supreme Court of Louisiana,) 17 So. Rep. 503.

Passenger, Conditions of Limited Ticket

In *Great Northern Railway Co.* v. *Palmer*, [1895] 1 Q. B. 862, a very interesting case recently decided by the Queen's Bench Division, the defendant, a passenger on the plaintiff's railway, took a special excursion ticket entitling her to travel from Peterborough to Woodhall Spa, at a fare considerably lower than the ordinary fare. The ticket contained a condition that if used for any other station it would be forfeited and the full fare charged. The defendant traveled to and returned from

Horncastle, a station beyond Woodhall Spa, paying the ordinary fare for the journeys between Woodhall Spa and Horncastle. The total amount paid by the defendant was much less than the ordinary return fare between Peterborough and Horncastle. Upon these facts the court held that the condition as to forfeiture was applicable to stations beyond that named on the ticket as well as to intermediate stations; and that as the defendant had used the ticket for a journey to a station other than that named on it, and not merely for a journey to the station for which it was available, the plaintiffs were therefore entitled to treat the ticket as forfeited, and to recover the full fare.

Contract, Gambling, Innocent Holder, Conflict of Laws

The Supreme Court of Illinois has recently held, in *Pope* v. *Hanke*, 40 N. E. Rep. 839, that, since notes given in settlement of gambling transactions are void, even in the hands of innocent indorsees for value before maturity, by the express language of Rev. Stat. Ill. 1893, c. 38, §§ 131 & 136, such notes will not be enforced, although made and indorsed in another state, by the laws of which such notes, though invalid as between the original parties, are good in the hands of innocent indorsees.

A contract between a purchaser of "futures" and a broker, made without the state, during the existence of a statute making it unlawful to deal in futures "in this state," cannot be enforced in the state, though valid where made: *Lemonius* v. *Mayer*, 71 Miss. 514; S. C., 14 So. Rep. 33; *White* v. *Eason*, (Miss.) 15 So. Rep. 66.

Gambling Contract, Delivery

The Privy Council of England, in *Forget* v. *Ostigny*, [1895] A. C. 318, has adopted the sound rule, that when a broker is employed to make purchases and sales of stock for a principal whose object is not investment but speculation, and these purchases and sales are actually completed by delivery to the holder, who obtains the money necessary to pay the advances required by hypothecating the stock, the transactions are not gambling contracts; for delivery to the broker is delivery to the principal.

There is an annotation on this subject, in 1 AM. L. REG. & Rev. (N. S.) 436.

An association of fire underwriters, formed under an agreement providing for the regulation of premium rates, the prevention of rebates, the compensation of agents, and nonintercourse with companies not members, is not an illegal conspiracy, and the accomplishment of its purposes by lawful means will not be enjoined at the suit of a company not a member of the association: *Continental Ins. Co.* v. *Board of Fire Underwriters of the Pacific*, (Circuit Court, Northern Dist. of California,) 67 Fed. Rep. 310.

Restraint of Trade, Combination of Insurers

According to a recent opinion of Judge WALES, of the Court of Oyer and Terminer of New Jersey, in the case of *State* v. *Harrigan*, 31 Atl. Rep. 1052, the use of intoxicating liquors by members of the jury, during a trial for capital felony, unless so excessive as to disqualify them for the intelligent performance of their duty, is no ground for a new trial; though it is irregular, and both the person who furnishes it, and the jurors who drink it, are deserving of censure, and may be punished for so acting without the permission of the court.

Criminal Law, New Trial, Use of Liquor by Jury

The old rule was that any indulgence in intoxicating liquors by the jury, during the progress of either a civil or criminal trial, was ground for setting aside the verdict, although the quantity taken was not enough to affect them in the least: *Peo.* v. *Douglass*, 4 Cow. (N. Y.) 26; *Brant* v. *Fowler*, 7 Cow. (N. Y.) 562; *Gregg* v. *McDaniel*, 4 Harr. (Del.) 367; but the New York cases cited were overruled by *Wilson* v. *Abrahams*, 1 Hill, 207, and the general rule now is, that indulgence in liquor by any of the jury, during a trial, whether criminal or civil, will not vitiate the verdict, unless it had an apparent effect upon those who partook of it, or was such as to create a presumption that they were affected by it: *Peo.* v. *Sansome*, 98 Cal. 235; S. C., 33 Pac. Rep. 202; *Peo.* v. *Bemmerly*, 98 Cal. 299; S. C., 33 Pac. Rep. 263; *Commonwealth* v. *Cleary*,

48 Pa. 26; *Howe* v. *State*, 11 Humph. (Tenn.) 491; *King* v. *State*, 91 Tenn. 617; S. C., 20 S. W. Rep. 169; *Sanitary District of Chicago* v. *Cullerton*, 147 Ill. 385; S. C., 35 N. E. Rep. 723; especially if administered by a physician to a sick juror: *Peo.* v. *Pscherhofer*, 64 Hun, (N. Y.) 483.

It has been held, however, that when the jury has drunk intoxicating liquor during the trial, it raises a presumption against the validity of the verdict, which may be rebutted by showing that in fact the jurors were not intoxicated: *State* v. *Madigan*, (Minn.) 59 N. W. Rep. 490; and in any case, the drinking of liquor during a trial is a gross impropriety, for which the juror, and the officer permitting it, may and should be punished: *Sanitary District of Chicago* v. *Cullerton*, 147 Ill. 385; S. C., 35 N. E. Rep. 723. If liquor is drunk at all, it should only be under the direction of the court: *State* v. *Reed*, (Idaho,) 35 Pac. Rep. 706; and the better course is for the trial judge to forbid the use of liquor in the jury room, unless by permission of the court, and for cause shown: *Commonwealth* v. *Cleary*, 148 Pa. 26. A violation of such an order will of course vitiate the verdict.

When the jury are allowed to separate at each day's adjournment, and a juror has been drunk one evening, but is not obviously drunk when he appears in his place the next day, there being other circumstances favoring the defendant, a new trial should be granted: *Brown* v. *State*, (Ind.) 36 N. E. Rep. 1108; and when the drinking of liquor by a juror is attended with improper conduct, as when he separates from his fellows to drink in a bar-room, or when liquor is conveyed to him by one who is interested in the result of the trial, a new trial should be granted: *Commonwealth* v. *Salyards*, 13 Pa. C. C. 470; and of course if he is obviously intoxicated, the verdict will be set aside.

Pleading, Constitutional Law

The Supreme Court of New Jersey has recently decided, that an act which provides that if a prisoner shall plead guilty to an indictment for murder, that plea shall be disregarded, a plea of not guilty be substituted, and the case be tried by a jury, is constitutional, since such a provision is favorable to the accused, and does not

deprive him of any indefeasible right: *Genz* v. *State*, 31 Atl. Rep. 1037.

Unauthorized Appeal, Effect of Reprieve

The Court of Appeals of New York, in *In re Buchanan*, 40 N. E. Rep. 883, has asserted some very salutary principles of criminal law, which the counsel for the criminal attempted to obscure, but ineffectually. These were (1) That as no appeal lies to the federal supreme court from an order of a federal district judge, made at chambers, denying a writ of *habeas corpus*, the taking of such an appeal does not act as a *supersedeas*, so as to prevent, until the determination of the appeal, the execution of the death sentence imposed by a state court on the appellant; and (2) That when a reprieve is granted in a capital case to a day certain, the warden should execute the sentence on the day the reprieve expires, and the time of execution need not be again fixed by the court.

When the execution of the sentence of a convict is respited by the governor, for the purpose of having the conviction reviewed by an appellate court, it is the duty of the sheriff to execute the sentence of the court on the day to which the execution is respited, unless the judgment be reversed or annulled, or a further respite be granted; and it is not necessary in such a case that the convict be previously brought into court by *habeas corpus*: *Peo.* v. *Enoch*, 13 Wend. 159. And a warrant from the governor to the sheriff, to suspend the execution of a prisoner until a day specified, and commanding him on that day, between the hours named, to execute the sentence, is a proper form of reprieve, and authorizes the sheriff, on the day named, to execute the prisoner, without the further order of the court: *Sterling* v. *Drake*, 29 Ohio St. 457.

Deed, Building Restrictions

According to the Supreme Court of Pennsylvania, the erection of a roofed porch, built on brick foundations, and permanently attached to the whole front width of a house, is a violation of a building restriction in a deed that all buildings shall be erected not less than a certain number of feet back from the fence line: *Ogontz Land & Improvement Co.* v. *Johnson*, 31 Atl. Rep.

1008. And in the opinion of the Supreme Judicial Court of Massachusetts, a similar restriction is violated by the erection, within the prohibited distance, of a piazza, eight feet wide, encircled by a railing, and having a roof supported by posts, attached to a house, and extending along its entire front: *Reardon* v. *Murphy*, 40 N. E. Rep. 854.

Donatio Mortis Causa

The Vice-Chancellor for Ireland has decided, in the recent case of *Porter* v. *Walsh*, [1895] 1 Ir. R. 284, that an unindorsed deposit receipt is a good subject-matter of a *donatio mortis causa.*

Easement, Prescriptive, Tacking

The Supreme Court of Georgia has lately ruled, that when one has for less than the statutory period of prescription used as a private way a strip of land belonging to another, and then, at the request of the owner, abandoned this strip, and with the consent of the owner used another strip belonging to the latter, in its stead, as a private way, also for less than the statutory period, the two users cannot be tacked together so as to create a prescriptive right of way in either strip, though together the period of use amounts to more than the statutory period: *Peters* v. *Little*, 22 S. E. Rep. 44.

Elections, Criminal Law, Signing Nomination Paper

The Supreme Judicial Court of Massachusetts, in *Commonwealth* v. *Connolly*, 40 N. E. Rep. 862, has recently laid down the principles of law governing a prosecution for falsely making or signing a certificate of nomination or nomination paper, as follows: (1) That it is sufficient to charge the offences in the language of the statute, as they were unknown at common law; (2) That a provision that any voter who signs a nomination paper shall do so in person, requires the voter to sign with his own hand, or to be present at the signing by another for him, and request it to be done; and (3) That it is no defence to a prosecution for signing a certificate of nomination in another's name, that the defendant entertained no criminal intent, and thought that he had a right to do so.

The Supreme Court of Missouri, (Division No. 1,) has recently held, that under a statute (Acts Mo. 1893, § 4781,) which provides that "on receipt of his ballot, the elector shall, forthwith, and without leaving the polling place, retire alone to one of the places, booths, or compartments provided, to prepare the ballot," the fact that several voters neglected to retire to the booths to mark their ballots will not make their votes illegal, when it does not appear that such neglect was wilful: *Hall* v. *Schoenecke*, 31 S.W. Rep. 97.

Preparation of Ballot

The Court of Appeals of New York, in *In re Goodman*, 40 N. E. Rep. 769, has affirmed the decision of the court below, reported in 31 N. Y. Suppl. 1043, that, under the Constitution of New York, Art. 2, § 3, which provides that, for purposes of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while a student of any seminary of learning, he does not, by rooming in a seminary while a student, gain a right to vote in the election district in which it is situate. It modifies the general language of that decision, however, by adding that there may be circumstances under which a student may gain a residence in the district where the seminary is situate; but that the acquisition of such a residence must be not only intended, but accomplished, wholly apart from his position as a student. See 2 AM. L. REG. & REV. (N. S.) 220, 281.

Voters, Students

Equity cannot, on the ground of preventing a multiplicity of suits, entertain jurisdiction of a bill by the receiver of a national bank against its stockholders to recover dividends illegally paid them out of its capital stock, as such a bill is multifarious, one stockholder having no interest in the claim against another: *Hayden* v. *Thompson*, (Circuit Court, Dist. of Nebraska,) 67 Fed. Rep. 273.

Equity, Pleading, Multifariousness

A conviction for obtaining property under false pretences cannot be had on the extrajudicial statements and admissions of the defendant alone as to the falsity of the statements, since that falsity is part of the *corpus delicti*, which must be proved otherwise: *Peo.* v. *Simonson*, (Supreme Court of California,) 40 Pac. Rep. 440.

False Pretences, Confession

In *Capehart* v. *Foster*, 63 N. W. Rep. 257, the Supreme Court of Minnesota has decided some interesting questions on the subject of fixtures, holding that, as between mortgagor and mortgagee, (1) Gas fixtures, consisting of chandeliers and burners, screwed to the ends of the gas pipes projecting from the walls and ceilings of the building, are not a part of the realty; (2) That the foregoing is to be regarded as an arbitrary exception to the general rule regarding fixtures, and does not apply to steam radiators, attached at the floors to steam pipes by being screwed to them, and such radiators are to be considered as a part of the realty; (3) That an electric annunciator, attached to the wall and to all the wires of the electric bell system of a hotel, is a part of the realty; and (4) That an office desk, about twenty-five feet long, resting on a tile floor, between projections in the walls, to which it was fastened by screws, and forming, with the space behind it, the hotel office, is a part of the realty.

Fixtures, Gas Fixtures, Steam Radiators

As between the holder of a real estate mortgage and a chattel mortgagee, carpets, curtain rods and gas fixtures, and their attachments, are movables; but as to whether ranges, hot water boilers, sinks and washtubs are movables, depends on when and how they were attached to the house: *Manning* v. *Ogden*, 24 N. Y. Suppl. 70.

When land was leased for the use of operating an electric lighting plant, and the lessee built on a solid stone foundation, laid with mortar, a substantial dynamo house, in which he placed two dynamos; and also built a boiler house of rough lumber upon sills laid on stone or blocks, with a shaft house or shed, constructed for the most part of old lumber from buildings on the premises, and a shafting twenty-nine feet long, resting on trestles imbedded in the ground to the depth of two feet, it was held that the buildings, as well as the machinery, were accessory to the trade, and therefore were removable as trade fixtures by the lessee, on the termination of the lease: *Brown* v. *Reno Electric Light & Power Co.*, 55 Fed. Rep. 229.

In *National Bank of Catasauqua* v. *North*, 160 Pa. 303; S. C., 28 Atl. Rep. 694, it was held that radiators and valves connected with steam heating apparatus were not fixtures

attached to the realty, but were exactly analogous to gas fixtures, and therefore severable from the real estate.

As between mortgagor and mortgagee, a "bar," fastened by nails and screws to the wall and floor of a building used by the mortgagor as a saloon, is a part of the realty, and passes by the mortgagee: *Woodham* v. *First National Bank of Crookston*, 48 Minn. 67; S. C., 50 N. W. Rep. 1015.

Garnishment, Common Carrier

The Supreme Court of Minnesota has lately ruled, in *Stevehot* v. *Eastern Ry. Co. of Minnesota*, 63 N. W. Rep. 256, that property in the hands of a common carrier, in transit to a place outside of the state, is not subject to garnishment, although it is yet within the state at the time of the service of the garnishee summons.

Insurance, Policy, Limitation of Right to Sue

According to a recent decision of the Common Pleas of New York City and County, at special term, a provision in an insurance policy, that no action shall be brought on it by the insured, except against the attorneys in fact representing all of the insurers, is against public policy, on the ground that it ousts the jurisdiction of the courts: *Knorr* v. *Bates*, 33 N. Y. Suppl. 691.

Interstate Commerce, Obstruction of Mails, Injunction, Contempt

The Supreme Court of the United States, in refusing the petition for a writ of *habeas corpus* in *In re Debs*, 15 Sup. Ct. Rep. 900, went further than the circuit court, and based its decision on exceedingly broad principles, which will make it a landmark in the legal history of this country. These, as laid down in the opinion of Mr. Justice BREWER, are as follows:

(1) The government of the United States is one having jurisdiction over every foot of soil within its territory, and acting directly upon each citizen; and, while it is a government of enumerated powers, it has within the limits of these powers all the attributes of sovereignty:

(2) To it is committed power over interstate commerce, and the transmission of the mail; and the powers thus conferred are not dormant, but have been assumed and put into practical exercise by the legislation of Congress. In the exercise of

these powers, it is competent for the nation (through its officers) to remove all obstructions upon highways, natural or artificial, to the passage of interstate commerce, or the carrying of the mail:

(3) While it may be competent for the government, (through the executive branch, and in the use of the entire executive power of the nation,) to forcibly remove all such obstructions, it is equally within its power to appeal to the civil courts for an inquiry and determination as to the existence and character of any alleged obstructions, and if such are found to exisit, or threaten to occur, to invoke the powers of these courts to remove or restrain such obstructions:

(4) The jurisdiction of the courts to interfere in such matters by injunction is one recognized from ancient times, and by indubitable authority; and is not ousted by the fact that the obstructions are accompanied by or consist of acts in themselves violations of the criminal law:

(5) The proceeding by injunction is of a civil character, and may be enforced by proceedings in contempt, which are not an execution of the criminal laws of the land; and therefore the penalty for a violation of an injunction is no substitute for, and no defence to, a prosecution for any criminal offence committed in the course of such violation:

(6) That as the complaint in this case clearly showed an existing obstruction of artificial highways for the passage of interstate commerce and the transmission of the mail, not only temporarily existing, but threatening to continue, the circuit court had power to issue its process of injunction; that having issued, and having been served on the defendants, the circuit court had authority to inquire whether its orders had been disobeyed; when it found that they had been, then to proceed under Rev. Stat. U. S. § 725, and enter the order of punishment complained of; and, the circuit court having full jurisdiction in the premises, its finding of the fact of disobedience is not open to review on *habeas corpus* in the supreme or any other court.

The Supreme Court of Missouri, (Division No. 2,) has

recently decided, that under § 7211 of the Revised Statutes of that state, which declares that any person who deals in goods by going from place to place to sell the same is a peddler, one who, as agent of an establishment located in another state, takes one of the harrows which it has shipped to an agent in the state, and goes through the country with it, sometimes selling the single harrow outright, at other times taking a written order and then delivering the one with him, and at other times taking a written order and then going back for one to the agent to whom they had been shipped, is a peddler; and, because of the nature of his business, a license tax may be lawfully imposed upon him, without interfering with interstate commerce: *State* v. *Snoddy*, 31 S. W. Rep. 36.

Peddler, License Tax

The Supreme Court of Pennsylvania, in *Commonwealth* v. *Heckler*, 32 Atl. Rep. 52, has recently decided, reversing 14 Pa. C. C. 465, that one who, while driving about the neighborhood on Sunday to induce all the electors to vote at a coming election, carried a flask of liquor for his personal comfort, out of which he gave drinks to those on whom he called, without charge, and solely to cause good feeling, was not guilty of furnishing liquor on Sunday, within the act of May 13, 1887, P. L. 108, § 17, which prohibits the furnishing of intoxicating liquors on that day, by sale, gift, or otherwise.

Intoxicating Liquors, Sunday, Gift

An act restraining and regulating the sale of intoxicating liquors, which prohibits the furnishing of such liquors on Sunday, by "sale, gift, or otherwise," does not prohibit the use of liquors by a private citizen on his own table on Sunday, or make it a misdemeanor to furnish them to his family or his guests in his own house; the furnishing that is made punishable is a furnishing in evasion of the law: *Commonwealth* v. *Carey*, 151 Pa. 368; S. C., 25 Atl. Rep. 140, 31 W. N. C. 116.

When a prohibitory liquor law excepts from its provisions persons who give liquor to "their invited guests at their own household," one whom another has invited to his house for

the purpose of giving him a drink is to be regarded as an "invited guest," within the meaning of the statute: *Powers* v. *Commonwealth*, 90 Ky. 167.

But when a statute prohibits the sale or gift of intoxicating liquors on election day, it is immaterial that the gift of the liquor has no reference to the election, as the statute makes no exception: *Wolf* v. *State*, (Ark.) 27 S. W. Rep. 77; *Commonwealth* v. *Murphy*, 95 Ky. 38; S. C., 23 S. W. Rep. 655. This seems questionable, however; and it is hardly likely that a man would be convicted of giving a drink to a friend, in his own house, on election day.

Violation of Statute, Scienter

In *Sherras* v. *De Rutzen*, [1895] 1 Q. B. 918, the Queen's Bench Division has recently held, that a statute (35 & 36 Vict. c. 94, § 16, sub-s. 2,) which provides that if any licensed person "supplies any liquor or refreshment, whether by way of gift or sale, to any constable on duty, unless by authority of some superior officer of such constable," he shall be liable to a penalty, does not apply when the licensed person *bona fide* believes that the constable is off duty; but that guilty knowledge is an essential element of the offence. In this case the constable had removed his armlet, which he was required to wear while on duty, before going into the house; and WRIGHT, J., in his opinion, very tersely says: "It is plain that if guilty knowledge is not necessary, no care on the part of the publican could save him from a conviction, . . . since it would be as easy for the constable to deny that he was on duty, when asked, or to produce a forged permission from his superior officer, as to remove his armlet before entering the public-house."

The same judge also defines very clearly the three classes of cases in which the *mens rea* is not requisite, as (1) Those acts which are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty; (2) Some, and perhaps all, public nuisances; and (3) Cases in which, although the proceeding may be criminal in form, it is really only a summary mode of enforcing a civil right. The learned gentlemen who would hold a liquor-seller liable in all

cases for selling to a minor, in spite of any facts which would have led an ordinary man to believe him of full age, are respectfully referred to a *careful* perusal of this case.

Lease, Corporation, Receiver

A receiver of an insolvent corporation, who takes possession of a leasehold estate held by the corporation, does not thereby become an assignee of the term, nor liable on the covenants of the lease, but is liable only for a reasonable rent while in possession: *Bell* v. *American Protective League*, (Supreme Judicial Court of Massachusetts,) 40 N. E. Rep. 857.

Libel, Defamation of Goods, Special Damage

The House of Lords, in *White* v. *Mellin*, [1895] A. C. 154, has held, reversing the decision of the Court of Appeal, [1894] 3 Ch. 276, 2 AM. L. REG. & REV. (N. S.) 21, that since an action will not lie for a false statement in disparagement of a trader's goods without proof of special damage, the fact that the defendant sold the plaintiff's "Infant Food," affixing to the wrappers thereon a label stating that the defendant's food was far more nutritious and healthful than any other, in the absence of proof that the statement was untrue, or that it had caused any damage to the plantiff, would not authorize an action, or be sufficient ground for the issuing of an injunction to restrain the defendant.

Headlines of Article

In determining the question of libel, the headlines of a publication are important, and cannot be disregarded, for they often render a publication libelous on its face, which without them might not necessarily be so: *Landon* v. *Watkins*, (Supreme Court of Minnesota,) 63 N. W. Rep. 615.

Privileged Communication

According to a recent decision of the Court of Appeal of England, when the magistrates of a borough, for the purpose of facilitating the business of the general annual licensing meeting, ordered the defendant, who was head constable of the borough, to issue to persons having business before the meeting copies of a report made by him to the magistrates, stating the grounds of objection taken to the renewal of licenses, the publication of the report by the defendant, in pursuance of the order of the magistrates,

was made upon a privileged occasion, and therefore, in the absence of actual malice on his part, an action could not be maintained against him in respect of grounds of objection so published, which the plaintiffs alleged to be a libel upon them: *Andrews* v. *Bower*, [1895] 1 Q. B. 888.

Malicious Prosecution, Acts of Magistrate

When the defendant, in instituting the prosecution complained of, went before a magistrate with his counsel, to make a complaint, expecting to make the complaint in writing, and that the warrant would be issued in the usual manner, he is not liable for the act of the magistrate in directing the arrest of the defendant without a warrant: *Poupard* v. *Dumas*, (Supreme Court of Michigan,) 63 N. W. Rep. 301.

Probable Cause

When a person institutes a criminal prosecution, knowing that the facts did not authorize such action, there is no probable cause for the prosecution; and the finding of an indictment, or the fact that a justice of the peace required the plaintiff to enter into an undertaking to abide the order of the district court, is not conclusive proof of probable cause: *Flackler* v. *Novak*, (Supreme Court of Iowa,) 63 N. W. Rep. 348.

Mechanics' Liens, Sub-Contractor in Third Degree

Under a statute, (Comp. Stat. Mont., Div. 5, § 1391,) which provides that "all persons furnishing things or doing work shall be considered sub-contractors," a sub-contractor in the third degree is entitled to file a mechanics' lien: *Duignan* v. *Montana Club*, (Supreme Court of Montana,) 40 Pac. Rep. 294.

National Banks, Clearing-house Certificates

According to the Supreme Court of Pennsylvania, the issue of certificates by a clearing-house association, in return for cash or securities deposited in the hands of a committee by the members of the association, which certificates are receivable in payment of daily balances, is no violation of the laws relating to national banks: *Philler* v. *Patterson*, 32 Atl. Rep. 26.

Nuisance, Abatement, Merry-go-round

The Supreme Court of Appeals of West Virginia, in *Town of Davis* v. *Davis*, 21 S. E. Rep. 906, has recently held, that a merry-go-round, run by a steam engine, the whistle of which blew every few minutes, accompanied by a band, and attended by a large, noisy and boisterous crowd until after ten o'clock at night, disturbing some of the people who lived near it, was a nuisance, and after proper investigation, could be abated by the town council, under a statute, (Code W. Va., c. 47, § 28,) giving a town council power to abate, or cause to be abated, anything which in the opinion of a majority of the whole council shall be a nuisance. See 1 AM. L. REG. & REV. (N. S.) 872.

Officers, Free Pass

Under the Constitution of New York, Art. 13, § 5, providing that no public officer shall receive a free pass from any corporation, a railroad policeman, appointed under the laws of that state, and employed by the defendant corporation to prevent depredations upon its property, is not prohibited from receiving a pass from the defendant, when the pass is part of the compensation the plaintiff was to receive for rendering services to the defendant, and therefore was not gratuitous: *Dempsey* v. *New York Cent. & H. R. R. Co.*, (Court of Appeals of New York,) 40 N. E. Rep. 867. See 2 AM. L. REG. & REV. (N. S.) 230, 372.

Removal

According to a recent decision of the Supreme Court of California, an officer cannot be removed from office, during his second term, for a violation of duty committed during his first term, in the absence of express statutory provisions: *Thruston* v. *Clark*, 40 Pac. Rep. 435.

Under the provisions of the Constitution of Louisiana, however, which provides in Art. 196 that all state officers shall be liable to impeachment for certain enumerated causes, and in Art. 201 that district attorneys, clerks of court, sheriffs, &c., &c., shall be removed by judgment of the district court of the domicile of such officer, for any of the causes enumerated in Art. 196, that the proceeding for removal is akin to that of impeachment; and since impeachment will lie against an

officer for acts done in a preceding term, the acts denounced by Art. 196, done in a prior term of office, by an officer who is his own successor, will form the foundation of a suit for removal, under Art. 201: *State* v. *Bourgeois*, 45 La. Ann. 1350; S. C. 14 So. Rep. 28.

An officer cannot be removed for misconduct in another office which he held prior to his induction into the office from which it is sought to remove him: *Speed* v. *Common Council of City of Detroit*, 98 Mich. 360; S. C., 57 N. W. Rep. 406.

Partnership, Articles of Association, Liability of Estate of Deceased Partner

The Supreme Court of Pennsylvania has lately held, in *Wilcox* v. *Derickson*, 31 Atl. Rep. 1080, that a stipulation that the death of a partner shall not operate as a dissolution of the association, but that the decedent's shares shall thereupon vest in his executors, or administrators, or devisees of the stock, who shall succeed as in case of transfer on the books, (in which case the assignee of stock is made subject to the rights and obligations of the original owner thereof,) does not compel an executor of the deceased partner to accept the stock which belonged to his testators, so as to charge the decedent's general estate with firm debts contracted after his death.

Pawnbrokers, Regulation, City Ordinance

According to a recent decision of the Supreme Court of Missouri, (Division No. 2,) a city ordinance requiring every pawnbroker to keep a book, in which shall be entered a description of all property left with him in pawn, together with the name and description of the person by whom it was left, and to submit such book to the inspection of the mayor or any police officer, on demand, is a mere police regulation to aid in the detection and prevention of larceny, which a city has a right to pass, under a charter giving it power to license, regulate, tax, or suppress pawnbrokers; and such an ordinance is not unconstitutional, either (1) as being in conflict with the Fifth Amendment to the Constitution of the United States, providing that no person shall be compelled to be a witness against himself in any

criminal case, or (2) as being in conflict with Art. 2, § 18, of the Constitution of Missouri, providing that the people shall be secure in their persons, papers, houses and effects, from unreasonable searches and seizures: *City of St. Joseph* v. *Levin*, 31 S. W. Rep. 101.

Perjury

The Queen's Bench Division of England, in *The Queen* v. *Baker*, [1895] 1 Q. B. 797, has lately held, that all false statements wilfully and corruptly made by a witness as to matters which affect his credit are material, and he is liable to be convicted of perjury in respect thereof; and that therefore a defendant, charged with selling beer without a license, who falsely swears that, when previously charged with a similar offence, he had not authorized a plea of guilty to be put in, and that such a plea had been put in without his knowledge and against his will, is guilty of perjury, since such statements were material, as affecting the defendant's credit as a witness.

Principal and Agent, Excess of Authority, Liability of Principal

According to a recent decision of the House of Lords, when a principal entrusts an agent with securities, and instructs him to raise a certain sum upon them, but the agent borrows a larger sum upon them and fraudulently appropriates the difference, the principal cannot redeem the securities without paying the lender all he has lent, if the latter acted *bona fide* and in ignorance of the limitation, although the agent obtained the loan by fraud and forgery, and the lender did not know that the agent had authority to borrow at all, and made no inquiry: *Brocklesby* v. *Temperance Permanent Bldg. Soc.*, [1895] A. C. 173; affirming [1893] 3 Ch. 130.

Public Contract, Validity

A contract to act as county printer for the year, made with the county commissioners, at their regular meeting in January, is valid, in spite of the fact that a majority of the board, as it then existed, was to go out of office the week after: *Liggett* v. *Board of Comrs. of Kiowa Co.*, (Court of Appeals of Colorado,) 40 Pac. Rep. 475.

Unless there is some special statutory requirement, a city council or other contracting body cannot arbitrarily refuse to entertain a bid for public printing, because the bidder is not at that time the owner of a newspaper: *Berry* v. *City of Tacoma*, (Supreme Court of Washington,) 40 Pac. Rep. 414.

Rejection of Bid

School laws are not rendered special or local, or otherwise unconstitutional, by the fact that under their operation a higher grade of education may be afforded to the children in one district than that provided for those in another: *Landis* v. *Ashworth*, (Supreme Court of New Jersey,) 31 Atl. Rep. 1017.

School Laws, Constitutionality

In the opinion of the same court, the power to purchase land and erect a school-house includes also the power to fence and grade the lot, to supply the school property with drinking water, and to equip the school-house with proper school furniture: *State* v. *Board of Education of Cranbury*, 31 Atl. Rep. 1033.

Erection of School-house

When by statute, a sheriff is allowed his actual traveling expenses, in addition to his fees, the county is liable for railroad fare which he has paid, since they are part of the actual expenses necessarily incurred, even though he has a railroad pass, which he does not use: *Sargent* v. *Board of Comrs. of La Plata Co.*, (Supreme Court of Colorado,) 40 Pac. Rep. 366.

Sheriff, Traveling Expenses

The Supreme Court of North Carolina has recently decided, over the strong dissent of AVERY and CLARK, JJ., that when an enrolled bill has been duly signed by the President of the Senate and Speaker of the House, a court cannot go behind this record, and inquire whether, in the passage of the bill, it was fraudulently enrolled before it had been read before each house the number of times required by the constitution, though that fact is apparent on the face of the journal of proceedings kept by each house in accordance with the requirements of the constitution: *Carr* v. *Coke*, 22 S. E. Rep. 16. The real effect of this decision

Statutes, Passage, Journals

will be better understood from the fact that it appeared from the journal that the only bill similar to the one signed by the presiding officers had been introduced in the House of Representatives, passed first reading, was tabled on second reading, and was still to be found among the files of documents. No such bill had ever been introduced in the Senate. It would be difficult to conceive of a more flagrant abuse of legal principles.

MONTGOMERY, J., in his concurring opinion, stated the bearings of the question at issue very clearly, but unfortunately erred in his solution of it. It, he said, brought to light "the more than possibilities of two most serious menaces to popular government: The first one, that of the power of a corruptible or incompetent clerical force, or that of a depraved and hired set of lobbyists, or both together, to tamper with the acts and proceedings of the legislature, and have that certified to be law which never was in fact enacted; the second, that of the power of defeated and unscrupulous politicians, when stung by loss of office or a desire for revenge on their political enemies, to practically repeal the legislation of their successful opponents by resorts to the courts upon mere allegations that there was fraud in the passage of the acts or in their ratification, and by procuring injunctions upon affidavits obtained possibly through bribery, or through the ignorance or carelessness of the oath maker. By the decision of the court, the latter danger—the far most to be dreaded—is avoided. The presiding officers of the two houses may, by taking a sufficiency of time, and by close scrutiny and rigid examination of the bills and wrappers, prevent fraud and error in ratification, if such a thing be attempted; while for the latter danger no limit or restraint can be found, except in the conscience of men who have never cultivated a sense of either generosity or justice."

With all due deference, the latter contingency is *not* the most to be dreaded. By a lawsuit, no matter how baseless or vexatious, no matter how corruptly carried on, the truth stands a chance of being brought to light; but according to the ruling in this case, it can never be. The only remedy the

people have against a statute foisted upon them as this was, is to repeal it at the next session; and meanwhile suffer all its evil consequences. The repeal, too, might be prevented by the very means that secured the passage of the bill in the first place. The position of the learned judge is therefore utterly fallacious; and it is a pleasure to be able to contrast with his dogmatic inanities the vigorous language of the dissenting opinion of CLARK, J., which effectually disposes of the fancied inviolability of the certification of the bill by the presiding officers of the legislature. "The signing," he says, "has no law-making power in itself, but is a mere certification of what the law-making body has decided, and, like all certificates, may be impeached for fraud or mistake; otherwise the certificate is more powerful than the authority doing the act which is certified. If we could conceive that the two presiding officers of any legislature should purposely certify that a bill has passed which had in fact been defeated, this could not nullify the action of the two houses. If it could, then they, and not the general assembly, are the law-making power. Certainly, for a stronger reason, when the signatures of the presiding officers are procured by a trick and fraud practiced on them, there cannot be such virtue therein, as to make a law against the vote of the body."

This, however, did not prevent the court from adhering to its former decision when the question was raised before it a second time; and in *Wyatt* v. *Wheeler & Wilson Mfg. Co.*, (N. C.) 22 S. E. Rep. 120, it simply affirmed the decision in *Carr* v. *Coke*, with the same difference of opinion as in that case.

Statute of Frauds, Guarantee of Minor's Contracts

The Supreme Court of Texas has recently held, overruling the decision of the Court of Civil Appeals, in 31 S. W. Rep. 216, that since the contract of a minor to pay the principal and interest of money loaned him to carry on business is not void, the promise of another to answer for such a debt is within the statute of frauds, and the president of a bank cannot be held liable on a parol promise to become liable to the bank for the overdrafts of a minor; but he is liable to the bank for

any loss sustained by reason of loans to the minor which he has verbally promised to see repaid, on the ground that he has been guilty of a breach of trust: *Brown* v. *Farmers' & Merchants' Natl. Bank of Cleburne*, 31 S. W. Rep. 285.

Water Company, Breach of Contract, Liability for Loss by Fire

In *House* v. *Houston Waterworks Co.*, 31 S. W. Rep. 179, the Supreme Court of Texas, affirming the decision of the Court of Civil Appeals, (22 S. W. Rep. 277,) has ruled: (1) That a water company which has made a contract with a city to furnish water to extinguish fires, is not liable to the owners of private property destroyed by fire through its failure to furnish water according to the contract; (2) That the breach of the contract to furnish water does not render the company liable in tort for the destruction of private property by fire; and (3) That when a water company contracts with a city to furnish water to extinguish fires, it does not undertake a public duty which will render it liable for the destruction of private property on breach of the contract by failure to furnish water.

The owner of property which has been destroyed by fire cannot maintain an action to recover damages from a water company, on the ground that the property was destroyed by the failure of the water company to furnish a supply of water as required by the terms of its contract with the town, since there is no priority of contract between the parties to the action: *Nickerson* v. *Bridgeport Hydraulic Co.*, 46 Conn. 24; *Fowler* v. *Athens City Waterworks Co.*, 83 Ga. 219; S. C., 9 S. E. Rep. 673; *Fitch* v. *Seymour Water Co.*, (Ind.) 37 N. E. Rep. 982; *Davis* v. *Clinton Waterworks Co.*, 54 Iowa, 59; S. C., 6 N. W. Rep. 126; *Eaton* v. *Fairbury Waterworks Co.*, 37 Neb. 546; S. C., 56 N. W. Rep. 201; *Wainwright* v. *Queens Co. Waterworks Co.*, 28 N. Y. Suppl. 987; S. C., 78 Hun, (N. Y.) 146; *Beck* v. *Kittanning Water Co.*, (Pa.) 11 Atl. Rep. 300; *Foster* v. *Lookout Water Co.*, 3 Lea, (Tenn.) 42; *Britton* v. *Green Bay & Ft. Howard Waterworks Co.*, 81 Wis. 48; S. C., 51 N. W. Rep. 84. Nor does the fact that the ordinance granting the franchise requires the company to supply the city and its inhabitants with sufficient water to put out fires, or to main-

tain the water at a certain pressure, create the necessary priority of contract: *Fowler* v. *Athens City Waterworks Co.*, 83 Ga. 219; S. C., 9 S. E. Rep. 673; *Eaton* v. *Fairbury Waterworks Co.*, 37 Neb. 546; S. C., 56 N. W. Rep. 201; *Britton* v. *Green Bay & Ft. Howard Waterworks Co.*, 81 Wis. 48; S. C., 51 N. W. Rep. 84. Not even a statute, requiring the pipes to be kept charged at a certain pressure, will give the right of action; *Atchison* v. *Newcastle & Gateshead Waterworks Co.*, 2 Exch. Div. 441, reversing 6 L. R. Exch. 404.

The owner cannot maintain an action, even though the city has raised by taxation a special fund, to which the plaintiff contributed, to pay for a sufficient supply of water for use in case of fire: *Becker* v. *Keokuk Waterworks*, 79 Iowa, 419; S. C., 44 N. W. Rep. 694; or though the citizens pay a special tax to the company, under its contract with the city: *Howsmon* v. *Trenton Water Co.*, 119 Mo. 304; S. C., 24 S.W. Rep. 784.

A municipality has no power to contract by ordinance or otherwise with an individual or company, to indemnify a citizen and taxpayer for damages which he may sustain by reason of a failure to furnish water as provided in the contract, so as to enable the citizen to maintain an action therefor in his own name; nor is such power conferred by a statute authorizing cities to contract for the building and operation of waterworks by individuals or companies: *Vanhorn* v. *City of Des Moines*, 63 Iowa, 447; S. C., 19 N. W. Rep. 293; *Becker* v. *Keokuk Waterworks*, 79 Iowa, 419; S. C., 44 N. W. Rep. 694; *Mott* v. *Cherryvale Water & Mfg. Co.*, 48 Kans. 12; S. C., 28 Pac. Rep. 989; *Phœnix Ins. Co.* v. *Trenton Water Co.*, 42 Mo. App. 118.

Further, a municipality has no such interest in the property destroyed as to give it a right of action against the water company, and therefore the owner of the property destroyed cannot maintain an action against the company as assignee of the right of action of the municipality: *Ferris* v. *Carson Water Co.*, 16 Nev. 44.

But, under the Civil Code of Kentucky, § 18, which requires that every action must be prosecuted in the name of the real

party in interest, it has been held that when the contract of a water company with a city declares that it is made for the benefit of the inhabitants, and, *inter alia*, for the protection of private property against destruction by fire, the owner of property which is taxed for water-rent, and is destroyed by fire through the failure of the company to supply a sufficient quantity of water to extinguish the same, may, in his own name, sue the company on its contract with the city: *Paducah Lumber Co.* v. *Paducah Water Supply Co.*, 89 Ky. 340; S. C., 12 S. W. Rep. 554; *Duncan* v. *Owensboro Water Co.*, (Ky.) 12 S. W. Rep. 557.

The omission to furnish water to extinguish fires does not authorize the owner of property destroyed thereby to maintain an action of tort, since a mere breach, by omission only, of a contract entered into with the public, is not a tort, either direct or indirect, to the private property of an individual: *Fowler* v. *Athens City Waterworks Co.*, 83 Ga. 219; S. C., 9 S. E. Rep. 673.

Wills, Legacy Payable in futuro, Accumulations

The House of Lords has recently elaborated the principles laid down in *Saunders* v. *Vautier*, 4 Beav. 115; S. C., Cr. & P. 240, to the effect that (1) When in a will there is an absolute vested gift made payable at a future event, with directions to accumulate the income in the meantime and pay it with the principal, the courts will not enforce the trust for accumulation in which no person has any interest but the legatee, *i. e.*, that a legatee may put an end to an accumulation which is exclusively for his benefit; (2) This rule is as applicable when the legatee is a charity, corporate or unincorporate, as when he is an individual; and (3) When such an accumulation is directed for more than twenty-one years from the death of the testator, and is not effective, for the reason given above, the Thelluson Act, (39 & 40 Geo. 3, c. 98,) prohibiting indefinite trusts for accumulation, does not apply: *Wharton* v. *Masterman*, [1895] A. C. 186, affirming [1894] 2 Ch. 184.

When a testator devises and bequeathes his entire estate to

trustees, to collect the income therefrom, and divide the net income in specified proportions among his children for their respective lives, and, at the death of each child, gives and devises a specified portion of the corpus of the estate to the child or children of that deceased child, or, and in event of there being none, then to others, the implied intention is that, upon the death of each child, the estate which the trustees formerly had in that portion of the corpus which was given to the child or children of the deceased child, or to others in case there should be no child, should cease and determine, and that that portion of the corpus should vest in the parties entitled thereto, free from the trust: *Roarty* v. *Smith*, (Court of Chancery of New Jersey,) 31 Atl. Rep. 1031.

Trust, Construction